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FILED  
PAIGE TRAUTWEIN, CLERK

AUG 15 2013

DEPUTY

**MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT,**  
**RAVALLI COUNTY**

STATE OF MONTANA,	)	Cause No.: DC-11-117
	)	
Plaintiff,	)	<b>FILING OF STIPULATED</b>
	)	<b>PROPOSED JURY INSTRUCTIONS</b>
vs.	)	
	)	
HARRIS HIMES,	)	
	)	
Defendant.	)	
	)	

The State of Montana and the Defendant have stipulated to the attached Jury Instructions.

DATED this 15<sup>th</sup> day of August, 2013.

By:   
**JESSE LASLOVICH**  
**BRETT O'NEIL**  
Special Deputy Ravalli County Attorneys

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Hon. Loren Tucker  
5<sup>th</sup> Judicial District Court  
2 S. Pacific #6  
Dillon, MT 59725

By email to the following:

Sybil Shull

### **Stipulated Proposed Instructions**

1. Juror Misconduct
2. [Preliminary Instruction MCJI 1-102 (2009)]
3. [Preliminary Instruction MCJI 1-103 (2009)]
4. [Preliminary Instruction MCJI 1-104(2009)]
5. Count I: Theft by Deception
6. [Elements of Theft: Count I]
7. Deception
8. Knowingly
9. Purposely
10. [Elements of fraudulent and other prohibited practices Count IV]
11. Count V: Conspiracy to Commit Theft by Deception
12. Conspiracy to Commit Theft by Deception
13. Conspiracy – Responsibility for Acts of Co-Conspirators
14. Investment Contract Defined
15. State Defined
16. Offer Defined
17. Sale Defined
18. Issuer Defined
19. Salesperson Defined
20. Transact Defined
21. Voluntary Act
22. Evidence: Direct and Circumstantial
23. Evidence: Circumstantial
24. Circumstantial – Inference of Mental State
25. Evidence - Weight
26. Admissions or Confessions
27. Constitutional Right of Defendant Not to Testify

INSTRUCTION NO. \_\_\_\_

**Juror Misconduct**

You must obey the following rules as a juror. These rules have been developed and are used by this Court to ensure that the Defendant receives a fair trial. If you fail to follow these rules, the decision in this case could be based on irrelevant and non-legal issues, incorrect information, or prejudicial facts. In sum, the Defendant could be convicted or held not guilty based on inaccurate grounds.

Furthermore, if you observe any juror disobeying these rules, REPORT THE MISCONDUCT IMMEDIATELY TO THIS COURT.

**Rules**

**First**, DO NOT talk to ANYBODY about this case. This includes, but is not limited to, your family, friends, spiritual advisors, therapists, doctors, or lawyers.

**Second**, DO NOT share information about this case through writing or electronic devices. The prohibition against sharing information includes, but is not limited to, emailing, text messaging, tweeting, blogging on Facebook, MySpace, or accessing any other social networking and internet websites.

**Third**, you may only discuss this case with other jurors if ALL of the following conditions are met:

- (a) All of the evidence has been introduced;
- (b) The attorneys have completed their arguments;
- (c) I have instructed you on the law;
- (d) I instruct you to discuss the case;
- (e) You are in the jury deliberation room; and

(f) All of the jurors are present in the jury deliberation room with you.

**Fourth**, you MUST NOT allow anything outside of the courtroom to affect your decision. During the trial, do not read, listen, or watch anything outside of this courtroom about the case. Outside information does not accurately reflect the findings of this judicial system. As a result, the Defendant could be convicted or held not guilty based on incorrect information.

**Fifth**, DO NOT DO ANY independent or group research about this case. DO NOT conduct research using a book, dictionary, or the internet. Research over the internet includes, but is not limited to, the following research engines and websites: Google, Yahoo, Bing, Ask, and Wikipedia. Outside information has neither been tested for accuracy nor reflects the true circumstances of THIS CASE. While certain books and internet sources may seem reliable,' they were neither written nor created to address the circumstances of THIS CASE. Therefore, the Defendant could be convicted or held not guilty based on incorrect information if you conduct independent research.

**Sixth**, DO NOT conduct experiments, tests, or visit the scene of this case.

**Seventh**, if you have a cell phone or any other electronic communication device, turn the device off and DO NOT use the device while in Court. If you use a cell phone or any other electronic communication device while you are in the courtroom or research information about this trial when you return home for the evening, you may be fined by this Court.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-101 (2009)

Stipulated Proposed Instruction No. 1

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

Ladies and Gentlemen of the Jury:

It is my duty to instruct the jury on the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you.

No remarks I make or instructions I give are intended to express my opinion as to the facts in this case or what verdict you should return.

You should take the law in this case from my instructions alone. You should not accept anyone else's version as to what the law is in this case. You should not decide this case contrary to these instructions, even though you might believe the law ought to be otherwise. Counsel, however, may comment and argue to the jury upon the law as given in these instructions. If, in these instructions, any rule, direction, or idea is stated in varying ways, no emphasis thereon is intended by me, and none must be inferred by you. You are not to single out any sentence or any individual point or instruction, and ignore the others. You are to consider all of the instructions as a whole, and are to regard each in the light of all the others. The order in which the instructions are given has no significance as to their relative importance.

The function of the jury is to decide the issues of fact resulting from the charge filed in this Court by the State and the Defendant's plea of "not guilty" to the charge. You must perform this duty uninfluenced by passion or prejudice. You must not be biased against a Defendant because the Defendant has been arrested for this offense, or because charges have been filed, or because the Defendant has been brought before the Court to stand trial. None of these facts is evidence of guilt, and you are not permitted to infer or to speculate from any or all of them that the Defendant is more likely to be guilty than innocent.

You are to be governed solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the State and the Defendant have a right to demand, and they do demand and expect, that you will act conscientiously and dispassionately in considering and weighing the evidence and applying the law of the case.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-102 (2009)

Stipulated Proposed Instruction No. 2

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

You are the sole judges of the credibility, that is, the believability, of all the witnesses testifying in this case, and of the weight, that is, the importance, to be given their testimony. In judging the effect of evidence you must be fair and impartial and not arbitrary. While you have discretion in judging the effect of evidence, you must exercise that discretion in accordance with these instructions.

The evidence presented by one witness whom you believe is sufficient for the proof of any fact in this case.

You are not bound to decide any fact based upon the testimony of a larger number of witnesses whose testimony does not convince you against the testimony of a smaller number of witnesses (or against a presumption), or other evidence which does convince you.

In determining what the facts are in the case, it may be necessary for you to determine what weight should be given to the testimony of each witness. To do this you should carefully consider all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to indicate whether a witness is worthy of belief. You may consider:

1. The appearance of the witnesses on the stand, their manner of testifying, their apparent candor, their apparent fairness, their apparent intelligence, their knowledge and means of knowledge on the subject upon which they have testified.
2. Whether the witnesses have an interest in the outcome of the case or any motive, bias, or prejudice.

3. The extent to which the witnesses are either supported or contradicted by other evidence in the case.
4. The capacity of the witnesses to perceive and communicate information.
5. Proof that the witness has a bad character for truthfulness.

If you believe that any witness has willfully testified falsely as to any material matter in the case, you must reject such testimony as you believe to have been false and you have the right to view the rest of the testimony with distrust and in your discretion disregard it, unless, after examination of all the evidence, you find such testimony worthy of belief. This rule does not apply if, a witness:

1. unintentionally commits an error in the witness' testimony, or
2. is unintentionally mistaken as to some matters or facts about which the witness testifies, or
3. gives evidence concerning matters not material in this case without intention of deceiving the Court or jury.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-103 (2009)

Stipulated Proposed Instruction No. 3

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

An Information has been filed charging the Defendant, **HARRIS HIMES**, with the offenses of **THEFT, FAILURE TO REGISTER AS A SALESPERSON, FAILURE TO REGISTER A SECURITY, FRAUDULENT PRACTICES, CONSPIRACY TO COMMIT THEFT, AND CONSPIRACY TO COMMIT FRAUDULENT PRACTICES**, alleged to have been committed in **Ravalli** County, State of Montana, on or about **March 2008**. The Defendant has pled not guilty. The jury's task in this case is to decide whether the Defendant is guilty or not guilty based upon the evidence and the law as stated in my instructions. These are some of the rules of law that you must follow:

1. The filing of an Information is simply a part of the legal process to bring this case into Court for trial and to notify the Defendant of the charges against him/her.  
Neither the Information nor the charges contained therein are to be taken by you as any indication, evidence or proof that the Defendant is guilty of any offense.
2. By a plea of not guilty, the Defendant denies every allegation of the charge.
3. The State of Montana has the burden of proving the guilt of the Defendant beyond a reasonable doubt. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would rely and act upon it in the most important of his or her own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of a doubt.
4. The Defendant is presumed to be innocent of the charge against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict. It is not overcome unless from all the evidence in the

case you are convinced beyond a reasonable doubt that the Defendant is guilty. The Defendant is not required to prove his innocence or present any evidence.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-104(2009)

Stipulated Proposed Instruction No. 4

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Count I: Theft by Deception**

A person commits the offense of theft if the person purposefully or knowingly obtains control over property of the owner by deception, and has the purpose of depriving the owner of the property.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-6-301(2) (2007)

Stipulated Proposed Instruction No. 5

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Deception**

"Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-2-101(2007)

Stipulated Proposed Instruction No. 7

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Knowingly**

A person acts knowingly when the person is aware of his or her conduct.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 2-104 (2009)

Stipulated Proposed Instruction No. 8

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Purposely**

A person acts purposely when it is the person's conscious object to engage in conduct of that nature.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 2-106 (2009)

Stipulated Proposed Instruction No. 9

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

To convict the Defendant of the charge of fraudulent and other prohibited practices as alleged in Count IV, the State must prove the following elements:

1. The Defendant offered and/or sold a security;

**AND**

2. The offer and/or sale took place in, into, or from the State of Montana;

**AND**

3. In connection with the offer or sale, the Defendant omitted material facts when he failed to provide Geoffrey Serata with complete disclosure information or a prospectus about the security;

**AND**

4. In light of the circumstances, the Defendant omitting to provide Geoffrey Serata with complete disclosure information or a prospectus about the security was material to make the Defendant's statement's not misleading.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt, then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-301(1)(b) (2007)

Non-Stipulated Proposed Instruction No. 10

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Count V: Conspiracy to Commit Theft by Deception**

A person commits the offense of conspiracy to commit theft by deception when, with the purpose that the offense of theft by deception be committed, the person agrees with another to the commission of the offense of theft by deception, and an act in furtherance of the agreement is performed by any party to the agreement.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 45-6-301(2); §45-4-102.

Stipulated Proposed Instruction No. 11

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Conspiracy to Commit Theft by Deception**

To convict the Defendant of conspiracy to commit theft by deception, the State must prove the following elements:

1. That the Defendant agreed with James "Jeb" Bryant to the commission of the offense of theft by deception;

**AND**

2. That the Defendant did so with the purpose that the offense of theft by deception be committed;

**AND**

3. That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. §§ 45-6-301(2); § 45-4-102.

Stipulated Proposed Instruction No. 12

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Conspiracy – Responsibility for Acts of Co-Conspirators**

Each party to a conspiracy is responsible for all acts performed by his co-conspirators in furtherance of the conspiracy.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 45-2-302(3) (2007); *State v. Williams*, 185 Mont. 140, 604 P.2d 1224 (1979)

Stipulated Proposed Instruction No. 13

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

### Investment Contract Defined

The term "security" includes "investment contracts." An "investment contract" is "an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others." In order to demonstrate the existence of an investment contract, the State must prove beyond a reasonable doubt all four of the following elements:

- 1) Mr. Serata was offered or sold an investment;

AND

- 2) the investment was in a common venture;

AND

- 3) there was a reasonable expectation of profits;

AND

- 4) such profits would be derived through the entrepreneurial or managerial efforts of others.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: *Redding v. First Jud. Dist. Court*, 2012 MT 144, ~25,365 Mont. 316, 281 P.3d 189, citing *Stale v. Duncan*, 181 Mont 382, 393, 593 P.2d 1026, 1033 (1979)

Stipulated Proposed Instruction No. 14

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**State Defined**

“State” means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(23) (2007)

Stipulated Proposed Instruction No. 15

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_\_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Offer Defined**

“Offer” or “offer to sell” includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest of a security for value.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(15) (2007)

Stipulated Proposed Instruction No. 16

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Sale Defined**

“Sale” or “sell” includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(19) (2007)

Stipulated Proposed Instruction No. 17

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Issuer Defined**

“Issuer” means any person who issues or proposes to issue any security.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(13) (2007)

Stipulated Proposed Instruction No. 18

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Salesperson Defined**

“Salesperson” means any person who represents an issuer in effecting or attempting to effect sales of securities.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(20)(a) (2011)

Stipulated Proposed Instruction No. 19

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Transact Defined**

“Transact,” “Transact business,” or “Transaction” includes the meanings of the terms  
“sale,” “sell,” and “offer.”

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: Mont. Code Ann. § 30-10-103(24) (2007)

Stipulated Proposed Instruction No. 20

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Voluntary Act**

A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes and which is physically capable of being performed.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-107 (2009)

Stipulated Proposed Instruction No. 21

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Evidence: Direct and Circumstantial**

There are two kinds of evidence: direct and circumstantial.

Direct evidence is when a witness testifies directly of his/her knowledge of the main fact or facts to be proven.

Circumstantial evidence is proof from which the jury may infer other and connective facts which follow according to common experience.

Both direct evidence and circumstantial evidence are acceptable as means of proof. Neither is entitled to greater weight than the other.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-117 (2009)

Stipulated Proposed Instruction No. 22

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_\_

**Evidence: Circumstantial**

When circumstantial evidence is susceptible to two interpretations, one that supports guilt and the other that supports innocence, the jury determines which is most reasonable.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-117(a) (2009)

Stipulated Proposed Instruction No. 23

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Circumstantial – Inference of Mental State**

You are instructed that circumstantial evidence may be used to determine the existence of a particular mental state. You may infer mental state from what the Defendant does and says and from all the facts and circumstances involved.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-117(b) (2009)

Stipulated Proposed Instruction No. 24

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_\_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Evidence - Weight**

In deciding the believability and weight to be given the testimony of a witness, you may consider evidence of any other statement or statements made by the witness which is inconsistent with the witness's testimony at this trial.

This evidence may be considered by you for the purposes of testing the believability and weight of the witness's testimony or to establish the truth of these statements as the jury shall determine.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-118 (2009)

Stipulated Proposed Instruction No. 25

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_\_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Admissions or Confessions**

A statement made by a Defendant other than at this trial may be an admission or a confession.

A confession, as applied in criminal law, is a statement by a person made after the offense was committed that he/she committed or participated in the commission of a crime. An admission is a statement made by the accused, direct or implied, of facts pertinent to the issue, and tending, in connection with proof of other facts, to prove his/her guilt. A conviction cannot be based on an admission or confession alone.

The circumstances under which the statement was made may be considered in determining its credibility or weight. You are the exclusive judges as to whether an admission or a confession was made by the Defendant, and if so, whether such statement is true in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true.

Evidence of an unrecorded oral admission or oral confession of the Defendant should be viewed with caution.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-119 (2009)

Stipulated Proposed Instruction No. 26

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_\_\_ By \_\_\_\_

INSTRUCTION NO. \_\_\_\_

**Constitutional Right of Defendant Not to Testify**

In deciding whether or not to testify, the Defendant may choose to rely on the state of the evidence and upon the failure, if any, of the State to prove beyond a reasonable doubt every essential element of the charge against him.

A Defendant in a criminal trial has a constitutional right not to testify. You must not draw any inference from the fact that a Defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way.

GIVEN: \_\_\_\_\_  
DISTRICT JUDGE

SOURCE: MCJI 1-122 (2009)

Stipulated Proposed Instruction No. 27

Given as Instruction No. \_\_\_\_ Refused \_\_\_\_ Withdrawn \_\_\_\_ By \_\_\_\_